IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11538 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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LB SAPRA

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner No. 1
MR HD DESAI, ASST. GOVT. PLEADER FOR Resp 1,2,4
MR ANSHIN H DESAI for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/08/2002

ORAL JUDGEMENT

In the present petition, the petitioner claims interest on delayed payments in respect of the amount of his commuted pension as also gratuity due to him on the date of his retirement.

2. The following facts are abstracted from the record of the present proceedings, and are not in dispute:

2.1 The petitioner retired on 31st August 1996.

2.2 He received the amount of gratuity as also the commuted pension on 20th May 2000, the total sum being Rs.3,36,461/-.

2.3 At the relevant point of time, that is to say on the date of his retirement, the petitioner was facing an inquiry, from which he was exonerated by an order of the competent authority dated 3rd September 1997.

2.4 Consequently, the amount of gratuity [together with the amount of commuted pension] was paid to him on 20th May 2000. What is important and requires to be noted is that since the payment of gratuity was delayed, the 1st respondent accepted the liability to make payment of interest on the delayed payment, which was in consonance with various G.R.s issued by the State from time to time. Accordingly, the gratuity amount, viz. Rs.1,28,184/- was considered to be the principal, on which the petitioner would be entitled to interest. The State Government, therefore, in consonance with the relevant G.R.s, computed interest due on this figure at the rate of 12% per annum from 1st December 1996 upto 30th April 2000, the amount of such interest being Rs.52,555/-. This amount was in fact paid to him on 5th September 2001.

3. In the light of the aforesaid facts, since the amount of gratuity as also the interest thereon calculated on the basis of the relevant G.R.s has been paid to the petitioner, this claim cannot be pressed in the present petition. Learned counsel for the petitioner, therefore, does not press this particular claim.

4. However, the other claim made in the petition requires consideration, viz. interest on delayed payment of commuted pension.

5. Respondent No.3 herein, viz. District Development Officer, Junagadh District Panchayat has pointed out in its affidavit-in-reply [page 29, paragraph 7] that the petitioner had taken a House Building Loan from Bhuj District Panchayat and that a sum of Rs.7,387/_ by way of interest on this loan was outstanding from the petitioner, which was paid by him only on 8th February 2000, and, therefore, it should be held that the delay was only on account of the petitioner and the respondents are not obliged to pay any interest. What is relevant and requires to be noted is that this contention is raised by the Junagadh District Panchayat without any reference to the correspondence or documentation from the Bhuj District Panchayat, from whom the petitioner is supposed to have taken the House Building Loan. It is also relevant to note that the respondents No. 1,2 and 4 have not filed any affidavit-in-reply in the present petition. Thus, the respondents No. 1,2, and 4 have not put forward any independent defence or contention to show that it was on account of the delayed payment by the petitioner, of the outstanding interest on the House Building Loan, that the commuted pension could not be paid in time. Thus, the alleged delay on the part of the petitioner is only put forward by the respondent No.3, which, in any case, is not responsible for making timely payment of the commuted pension payable to the petitioner.

5.1 Even assuming for the sake of argument that it was the petitioner's payment of this outstanding interest on the House Building Loan that completed the procedure for payment of the commuted pension, the respondents No. 1,2 and 4 have failed to establish or even to point out that the petitioner was made aware of this outstanding against him, and that it was on account of his delayed payment of this obligation that resulted in the delayed payment of the commuted pension. It is significant to note that the respondents No. 1,2 and 4 have not, in any manner, contested the petition, except by oral submissions, and neither have these respondents supported the contention of the 3rd respondent by any independent affidavit-in-reply.

6. It would therefore appear, and this Court has no hesitation in holding that the respondents have failed to make out their contentions raised orally before the Court, that it was the petitioner who was responsible for the delay in finalisation of the figures and actual payment of the commuted pension due to him. It is, therefore, obvious that the concerned respondents would be liable to compensate the petitioner for making the

aforesaid delayed payment.

7. It does not require any detailed discussion of law on the subject. However, reference may be made to a decision of the Supreme Court, which is at Annexure XX to the present petition at page 44. Even otherwise, learned counsel for the respective parties are in agreement that although the question of interest on delayed payment of gratuity is subject matter of various G.R.s issued by the Government from time to time, there is no specific G.R. which pertains to payment of interest due to delay in making payment of commuted pension. However, this does not mean that the payment of interest on such delay cannot be considered in equity.

7.1 Learned counsel for the petitioner states that so far as the period for computation of such interest is concerned, he is prepared to accept that period as was accepted by the State for the calculation of interest for the purpose of gratuity, viz. from 1st December 1996 to 30th April 2000. Further more, learned counsel for the petitioner states that he is also prepared to accept the same rate of interest as would apply to delayed payment of gratuity.

8. So far as the period of computation of interest is concerned, I have no hesitation in holding that the submission made by the learned counsel for the petitioner is just and reasonable. If the Government considered the said period to be appropriate for the purpose of computing interest on gratuity, it would be just and proper to consider the same period for computing interest on commuted pension also.

8.1 However, so far as the rate of interest on delayed payment of commuted pension is concerned, the same rate as applicable to gratuity would not ipso-facto follow. The reason is plain and simple. As aforesaid, the rate of interest which would apply to delayed payment of gratuity is specifically contemplated by the two G.R.s issued by the Government which are on record. Further, as aforesaid, these two G.R.s specifically pertain to gratuity, and further, as aforesaid, there are no G.R.s which pertain to pension or commuted pension. In my opinion, therefore, it would not be appropriate to apply the same rate of interest for delayed payment of commuted pension as would apply for delay in payment of gratuity. On facts and circumstances of the case, I am of the opinion that the interest of justice would be served if interest at the rate of 10% per annum is awarded in respect of delay in payment of commuted pension.

9. In the premises aforesaid, it is held that the petitioner shall be entitled to interest at the rate of 10% p.a. on the amount of commuted pension for the period from 1st December 1996 upto 30th April 2000. The respondent No.1 is accordingly directed to make this payment to the petitioner within three months from the date of the present order.

10. Rule is accordingly made absolute to the aforesaid extent, with no orders as to costs.

(Y.B. BHATT, J.)

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